National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: July 9, 1997

TO: Louis J. D'Amico, Regional Director, Region 5

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Washington Post Mailers' UnionWashington Post Mailers' Union No. 29 and Communications Workers of America (The Washington Post), Case 5-CB-8381

554-1475-0137-2000, 554-1475-0137-4000, 544-1475-0137-8000, 554-1483-012

This case was submitted for advice as to whether the Union violated Section 8(b)(3) by refusing to bargain about and provide information about the unit seniority list.

FACTS

The Union represents separate units of mailers and helpers at the Employer's facility. This charge concerns the mailers' unit. The most recent collective-bargaining agreement expired on June 15, 1997. That agreement incorporated separate unit "priority" or seniority lists, as determined by the Union. Disputes between the Union and the Employer about the creation, maintenance, and application of the mailers' priority list have led to the filing of several grievances and demands for arbitration as well as the filing of several unfair labor practice charges.

In Washington Mailers Union No. 29 and Communications Workers of America (Washington Post Co.), Case 5-CB-8058, Advice Memorandum dated June 9, 1997, we concluded that the Section 8(b)(1)(A) and (2) charge alleging that the Union unlawfully maintained a grievance and arbitration demand that would require the Employer to make promotions to salaried foreman positions based on allegedly unlawful Union considerations under a Union-controlled priority system should be dismissed, absent withdrawal, because the grievance was facially lawful, Section 10(b) bars consideration of evidence allegedly showing that the grievance sought an unlawful objective, and the Employer had not shown that Section 10(b) should be tolled to permit consideration of such evidence.

On June 10, 1997, the Office of Appeals upheld the Region's dismissal of the charge in Case 5-CB-8279, which alleged that the Union had violated Section 8(b)(3) by refusing to give the Employer the summary reports that it had allegedly used to determine employees' priority dates. The Office of Appeals noted that the Employer had much of the requested information in its own personnel records because priority dates are determined by the dates on which employees first work in priority positions in the Employer's mailroom. The Office of Appeals further noted that summary reports concerning Union members who were not employees of the Employer were not presumptively relevant and that the Employer had not demonstrated the relevance of such information.

In this charge, the Employer alleges that the Union has failed to bargain with it about the priority list and has failed to provide requested information concerning the list. The information that the Employer requested included information about Union members who work for different employers as well as information about the Employer's unit employees. In requesting this information, the Employer relies on Section 4 of the contract, which states, "If...any provision of this Agreement is held contrary to any local or Federal law by a court of competent jurisdiction, then either party shall have the right to open this Agreement on this matters found in conflict with law." The Union has responded that the collective-bargaining agreement stated, at Article V, Section 2, that priority "stands as recorded" under the International Union's General Laws, which are incorporated into the contract.[(1)]

ACTION

We conclude that the charge should be dismissed, absent withdrawal.

The Employer requested information about the Union's priority list in order to bargain, during the life of the contract, about modification of the list of unit employees which, it had contended, was unlawfully maintained and enforced. As noted above, in our June 9, 1997, Advice Memorandum, we concluded that the priority list applicable to the mailers' unit was facially lawful. We further concluded that any attack on the creation of the list or the placement on the list of various employees or groups of employees was barred by Section 10(b).

Thus, the priority list as established was incorporated into the collective-bargaining agreement. As such, it was a term that was fixed for the duration of that agreement, and the Union had no obligation to bargain about that term during the duration of the agreement.[2] It follows that the Employer had no contractual basis for its demand for midterm bargaining[3] and, therefore, no right to obtain information requested for such bargaining.[4] Moreover, the Employer knows the criteria that the Union has used to establish priority, has access to the Union's list as it is posted at the Employer's facility, and has access to the relevant information contained in its own personnel records.

Arizona Public Service Company, 247 NLRB 321 (1980), is distinguishable. In that case, a contractual subcontracting restriction had been found violative of Section 8(e) and the company was found obligated to bargain, during the term of the contract, for a new provision to replace the unlawful provision. The contract contained a savings clause and a reopener provision. Here, on the other hand, the contractual priority list was facially valid, so there was no need for midterm negotiations and modifications of the list pursuant to Section 4 of the collective bargaining agreement. Accordingly, as noted above, the Union was not obligated to provide information that the Employer asserted it needed in order to engage in such midterm negotiations.[5]

Finally, the Union had no obligation to respond to the Employer's request for information concerning priority dates of Union members who worked for other employers. Since such information does not involve unit employees, it is not presumptively relevant. Moreover, the Employer has not demonstrated the relevance of the information.[6] Accordingly, the charge should be dismissed, absent withdrawal.

B.J.K.

---

[1] In Case 5-CB-8542, the Employer has alleged that the Union has violated Section 8(b)(3) by refusing to provide information about the priority list that is necessary and relevant to bargaining for a successor contract to the one that expired on June 15. The Region is currently investigating that charge.

[2] See Mack Trucks, Inc., 277 NLRB 711 (1985); Harvstone Mfg. Corp., 272 NLRB 939, 942 (1984), enf. den. 785 F.2d 570 (7th Cir. 1986).

[3] Cf. Teamsters Local 917 (Industry City), 307 NLRB 1419 (1992).

[4] See, e.g., Detroit Edison Co., 314 NLRB 1273 (1994).

[5] Furthermore the contract has since expired by its terms on June 15, 1997. Thus the Employer is now in a position to bargain about priority.

[6] Compare Iron Workers Local 207 (Steel Erecting Contractors), 319 NLRB 87 (1995).